

JAN 28 2015

---

## A BILL FOR AN ACT

---

RELATING TO AMENDING OR REPEALING VARIOUS PROVISIONS OF HAWAII  
TAX LAWS FOR THE PURPOSE OF DELETING OBSOLETE OR  
UNNECESSARY PROVISIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that sections of the  
2       general excise tax and public service company tax laws contain  
3       provisions that were to phase in the effect of certain  
4       amendments over several years. However, the phase-in periods  
5       for those provisions have long since ended, making those  
6       provisions obsolete.

7       The purpose of this Act is to repeal the obsolete  
8       provisions in the general excise tax and public service company  
9       tax laws.

10       SECTION 2. Section 237-4, Hawaii Revised Statutes, is  
11       amended to read as follows:

12       "§237-4 "Wholesaler", "jobber", defined. (a)

13       "Wholesaler" or "jobber" applies only to a person making sales  
14       at wholesale. Only the following are sales at wholesale:

15       (1) Sales to a licensed retail merchant, jobber, or other  
16       licensed seller for purposes of resale;



1           (2) Sales to a licensed manufacturer of materials or  
2           commodities that are to be incorporated by the  
3           manufacturer into a finished or saleable product  
4           (including the container or package in which the  
5           product is contained) during the course of its  
6           preservation, manufacture, or processing, including  
7           preparation for market, and that will remain in such  
8           finished or saleable product in such form as to be  
9           perceptible to the senses, which finished or saleable  
10          product is to be sold and not otherwise used by the  
11          manufacturer;

12          (3) Sales to a licensed producer or cooperative  
13          association of materials or commodities that are to be  
14          incorporated by the producer or by the cooperative  
15          association into a finished or saleable product that  
16          is to be sold and not otherwise used by the producer  
17          or cooperative association, including specifically  
18          materials or commodities expended as essential to the  
19          planting, growth, nurturing, and production of  
20          commodities that are sold by the producer or by the  
21          cooperative association;



- 1           (4) Sales to a licensed contractor, of materials or  
2           commodities that are to be incorporated by the  
3           contractor into the finished work or project required  
4           by the contract and that will remain in such finished  
5           work or project in such form as to be perceptible to  
6           the senses;
- 7           (5) Sales to a licensed producer, or to a cooperative  
8           association described in section 237-23(a)(7) for sale  
9           to a licensed producer, or to a licensed person  
10          operating a feed lot, of poultry or animal feed,  
11          hatching eggs, semen, replacement stock, breeding  
12          services for the purpose of raising or producing  
13          animal or poultry products for disposition as  
14          described in section 237-5 or for incorporation into a  
15          manufactured product as described in paragraph (2) or  
16          for the purpose of breeding, hatching, milking, or egg  
17          laying other than for the customer's own consumption  
18          of the meat, poultry, eggs, or milk so produced;  
19          provided that in the case of a feed lot operator, only  
20          the segregated cost of the feed furnished by the feed  
21          lot operator as part of the feed lot operator's



1 service to a licensed producer of poultry or animals  
2 to be butchered or to a cooperative association  
3 described in section 237-23(a)(7) of such licensed  
4 producers shall be deemed to be a sale at wholesale;  
5 and provided further that any amount derived from the  
6 furnishing of feed lot services, other than the  
7 segregated cost of feed, shall be deemed taxable at  
8 the service business rate. This paragraph shall not  
9 apply to the sale of feed for poultry or animals to be  
10 used for hauling, transportation, or sports purposes;

11 (6) Sales to a licensed producer, or to a cooperative  
12 association described in section 237-23(a)(7) for sale  
13 to the producer, of seed or seedstock for producing  
14 agricultural and aquacultural products, or bait for  
15 catching fish (including the catching of bait for  
16 catching fish), which agricultural and aquacultural  
17 products or fish are to be disposed of as described in  
18 section 237-5 or to be incorporated in a manufactured  
19 product as described in paragraph (2);

20 (7) Sales to a licensed producer, or to a cooperative  
21 association described in section 237-23(a)(7) for sale



1 to such producer; of polypropylene shade cloth; of  
2 polyfilm; of polyethylene film; of cartons and such  
3 other containers, wrappers, and sacks, and binders to  
4 be used for packaging eggs, vegetables, fruits, and  
5 other agricultural and aquacultural products; of  
6 seedlings and cuttings for producing nursery plants or  
7 aquacultural products; or of chick containers; which  
8 cartons and such other containers, wrappers, and  
9 sacks, binders, seedlings, cuttings, and containers  
10 are to be used as described in section 237-5, or to be  
11 incorporated in a manufactured product as described in  
12 paragraph (2);

13 (8) Sales of tangible personal property where:

14 (A) Tangible personal property is sold upon the order  
15 or request of a licensed seller for the purpose  
16 of rendering a service in the course of the  
17 person's service business or calling, or upon the  
18 order or request of a person subject to tax under  
19 section 237D-2 for the purpose of furnishing  
20 transient accommodations;



(B) The tangible personal property becomes or is used as an identifiable element of the service rendered; and

(C) The cost of the tangible personal property does not constitute overhead to the licensed seller; ~~[the sale shall be subject to section 237-13.3;]~~

(9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;

(10) Sales of services to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling, including a dealer's furnishing of goods or services to the purchaser of tangible personal property to fulfill a



warranty obligation of the manufacturer of  
the property;

(ii) In the context of a service-to-tangible  
personal property transaction, a service is  
rendered upon the order or request of a  
licensed seller for the purpose of  
manufacturing, producing, or preparing  
tangible personal property to be sold;

(iii) In the context of a services-to-contracting  
transaction, a service is rendered upon the  
order or request of a licensed contractor as  
defined in section 237-6 for the purpose of  
assisting that licensed contractor; or

(iv) In the context of a services-to-transient  
accommodations rental transaction, a service  
is rendered upon the order or request of a  
person subject to tax under section 237D-2  
for the purpose of furnishing transient  
accommodations;

(B) The benefit of the service passes to the customer  
of the licensed seller, licensed contractor, or



1 person furnishing transient accommodations as an  
2 identifiable element of the other service or  
3 property to be sold, the contracting, or the  
4 furnishing of transient accommodations;

5 (C) The cost of the service does not constitute  
6 overhead to the licensed seller, licensed  
7 contractor, or person furnishing transient  
8 accommodations;

9 (D) The gross income of the licensed seller is not  
10 divided between the licensed seller and another  
11 licensed seller, contractor, or person furnishing  
12 transient accommodations for imposition of the  
13 tax under this chapter;

14 (E) The gross income of the licensed seller is not  
15 subject to a deduction under this chapter or  
16 chapter 237D; and

17 (F) The resale of the service, tangible personal  
18 property, contracting, or transient  
19 accommodations is subject to the tax imposed  
20 under this chapter at the highest tax rate.





1           ~~[Sales subject to this paragraph shall be subject to~~  
2           ~~section 237-13.3,]~~

3           (11) Sales to a licensed retail merchant, jobber, or other  
4           licensed seller of bulk condiments or prepackaged  
5           single-serving packets of condiments that are provided  
6           to customers by the licensed retail merchant, jobber,  
7           or other licensed seller;

8           (12) Sales to a licensed retail merchant, jobber, or other  
9           licensed seller of tangible personal property that  
10          will be incorporated or processed by the licensed  
11          retail merchant, jobber, or other licensed seller into  
12          a finished or saleable product during the course of  
13          its preparation for market (including disposable,  
14          nonreturnable containers, packages, or wrappers, in  
15          which the product is contained and that are generally  
16          known and most commonly used to contain food or  
17          beverage for transfer or delivery), and which finished  
18          or saleable product is to be sold and not otherwise  
19          used by the licensed retail merchant, jobber, or other  
20          licensed seller;



1       (13) Sales of amusements subject to taxation under section  
2           237-13(4) to a licensed seller engaging in a business  
3           or calling whenever:

4       (A) Either:

5           (i) In the context of an amusement-to-service  
6               transaction, an amusement is rendered upon  
7               the order or request of a licensed seller  
8               for the purpose of rendering another service  
9               in the course of the seller's service  
10              business or calling;

11          (ii) In the context of an amusement-to-tangible  
12               personal property transaction, an amusement  
13               is rendered upon the order or request of a  
14               licensed seller for the purpose of selling  
15               tangible personal property; or

16          (iii) In the context of an amusement-to-amusement  
17               transaction, an amusement is rendered upon  
18               the order or request of a licensed seller  
19               for the purpose of rendering another  
20               amusement in the course of the person's  
21               amusement business;



- 1 (B) The benefit of the amusement passes to the  
2 customer of the licensed seller as an  
3 identifiable element of the other service,  
4 tangible personal property to be sold, or  
5 amusement;
- 6 (C) The cost of the amusement does not constitute  
7 overhead to the licensed seller;
- 8 (D) The gross income of the licensed seller is not  
9 divided between the licensed seller and another  
10 licensed seller, person furnishing transient  
11 accommodations, or person rendering an amusement  
12 for imposition of the tax under chapter 237;
- 13 (E) The gross income of the licensed seller is not  
14 subject to a deduction under this chapter; and
- 15 (F) The resale of the service, tangible personal  
16 property, or amusement is subject to the tax  
17 imposed under this chapter at the highest rate.

18 As used in this paragraph, "amusement" means  
19 entertainment provided as part of a show for which  
20 there is an admission charge [~~Sales subject to this~~  
21 ~~paragraph shall be subject to section 237-13.3~~]; and



1       (14) Sales by a printer to a publisher of magazines or  
2               similar printed materials containing advertisements,  
3               when the publisher is under contract with the  
4               advertisers to distribute a minimum number of  
5               magazines or similar printed materials to the public  
6               or defined segment of the public, whether or not there  
7               is a charge to the persons who actually receive the  
8               magazines or similar printed materials.

9       (b) If the use tax law is finally held by a court of  
10      competent jurisdiction to be unconstitutional or invalid insofar  
11      as it purports to tax the use or consumption of tangible  
12      personal property imported into the State in interstate or  
13      foreign commerce or both, wholesalers and jobbers shall be taxed  
14      thereafter under this chapter in accordance with the following  
15      definition (which shall supersede the preceding paragraph  
16      otherwise defining "wholesaler" or "jobber"): "Wholesaler" or  
17      "jobber" means a person, or a definitely organized division  
18      thereof, definitely organized to render and rendering a general  
19      distribution service that buys and maintains at the person's  
20      place of business a stock or lines of merchandise that the  
21      person distributes; and that the person, through salespersons,



1 advertising, or sales promotion devices, sells to licensed  
2 retailers, to institutional or licensed commercial or industrial  
3 users, in wholesale quantities and at wholesale rates. A  
4 corporation deemed not to be carrying on a trade or business in  
5 this State under section 235-6 shall nevertheless be deemed to  
6 be a wholesaler and shall be subject to the tax imposed by this  
7 chapter."

8 SECTION 3. Section 237-13, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§237-13 **Imposition of tax.** There is hereby levied and  
11 shall be assessed and collected annually privilege taxes against  
12 persons on account of their business and other activities in the  
13 State measured by the application of rates against values of  
14 products, gross proceeds of sales, or gross income, whichever is  
15 specified, as follows:

16 (1) Tax on manufacturers.

17 (A) Upon every person engaging or continuing within  
18 the State in the business of manufacturing,  
19 including compounding, canning, preserving,  
20 packing, printing, publishing, milling,  
21 processing, refining, or preparing for sale,



1 profit, or commercial use, either directly or  
2 through the activity of others, in whole or in  
3 part, any article or articles, substance or  
4 substances, commodity or commodities, the amount  
5 of the tax to be equal to the value of the  
6 articles, substances, or commodities,  
7 manufactured, compounded, canned, preserved,  
8 packed, printed, milled, processed, refined, or  
9 prepared for sale, as shown by the gross proceeds  
10 derived from the sale thereof by the manufacturer  
11 or person compounding, preparing, or printing  
12 them, multiplied by one-half [~~of one~~] per cent.

13 (B) The measure of the tax on manufacturers is the  
14 value of the entire product for sale, regardless  
15 of the place of sale or the fact that deliveries  
16 may be made to points outside the State.

17 (C) If any person liable for the tax on manufacturers  
18 ships or transports the person's product, or any  
19 part thereof, out of the State, whether in a  
20 finished or unfinished condition, or sells the  
21 same for delivery to points outside the State



1 (for example, consigned to a mainland purchaser  
2 via common carrier f.o.b. Honolulu), the value of  
3 the products in the condition or form in which  
4 they exist immediately before entering interstate  
5 or foreign commerce, determined as hereinafter  
6 provided, shall be the basis for the assessment  
7 of the tax imposed by this paragraph. This tax  
8 shall be due and payable as of the date of entry  
9 of the products into interstate or foreign  
10 commerce, whether the products are then sold or  
11 not. The department shall determine the basis  
12 for assessment, as provided by this paragraph, as  
13 follows:

14 (i) If the products at the time of their entry  
15 into interstate or foreign commerce already  
16 have been sold, the gross proceeds of sale,  
17 less the transportation expenses, if any,  
18 incurred in realizing the gross proceeds for  
19 transportation from the time of entry of the  
20 products into interstate or foreign  
21 commerce, including insurance and storage in



1 transit, shall be the measure of the value  
2 of the products;

3 (ii) If the products have not been sold at the  
4 time of their entry into interstate or  
5 foreign commerce, and in cases governed by  
6 clause (i) in which the products are sold  
7 under circumstances such that the gross  
8 proceeds of sale are not indicative of the  
9 true value of the products, the value of the  
10 products constituting the basis for  
11 assessment shall correspond as nearly as  
12 possible to the gross proceeds of sales for  
13 delivery outside the State, adjusted as  
14 provided in clause (i), or if sufficient  
15 data are not available, sales in the State,  
16 of similar products of like quality and  
17 character and in similar quantities, made by  
18 the taxpayer (unless not indicative of the  
19 true value) or by others. Sales outside the  
20 State, adjusted as provided in clause (i),  
21 may be considered when they constitute the





1 best available data. The department shall  
2 prescribe uniform and equitable rules for  
3 ascertaining the values;

4 (iii) At the election of the taxpayer and with the  
5 approval of the department, the taxpayer may  
6 make the taxpayer's returns under clause (i)  
7 even though the products have not been sold  
8 at the time of their entry into interstate  
9 or foreign commerce; and

10 (iv) In all cases in which products leave the  
11 State in an unfinished condition, the basis  
12 for assessment shall be adjusted so as to  
13 deduct the portion of the value as is  
14 attributable to the finishing of the goods  
15 outside the State.

16 (2) Tax on business of selling tangible personal property;  
17 producing.

18 (A) Upon every person engaging or continuing in the  
19 business of selling any tangible personal  
20 property whatsoever (not including, however,  
21 bonds or other evidence of indebtedness, or



1           stocks), there is likewise hereby levied, and  
2           shall be assessed and collected, a tax equivalent  
3           to four per cent of the gross proceeds of sales  
4           of the business; provided that, in the case of a  
5           wholesaler, the tax shall be equal to one-half  
6           ~~[of one]~~ per cent of the gross proceeds of sales  
7           of the business; and provided further that  
8           insofar as the sale of tangible personal property  
9           is a wholesale sale under section 237-4(a)(8),  
10          the ~~[sale shall be subject to section 237-13.3.]~~  
11          tax shall be one-half per cent of the gross  
12          proceeds. Upon every person engaging or  
13          continuing within this State in the business of a  
14          producer, the tax shall be equal to one-half of  
15          one per cent of the gross proceeds of sales of  
16          the business, or the value of the products, for  
17          sale, if sold for delivery outside the State or  
18          shipped or transported out of the State, and the  
19          value of the products shall be determined in the  
20          same manner as the value of manufactured products  
21          covered in the cases under paragraph (1)(C).



1           (B) Gross proceeds of sales of tangible property in  
2 interstate and foreign commerce shall constitute  
3 a part of the measure of the tax imposed on  
4 persons in the business of selling tangible  
5 personal property, to the extent, under the  
6 conditions, and in accordance with the provisions  
7 of the Constitution of the United States and the  
8 Acts of the Congress of the United States which  
9 may be now in force or may be hereafter adopted,  
10 and whenever there occurs in the State an  
11 activity to which, under the Constitution and  
12 Acts of Congress, there may be attributed gross  
13 proceeds of sales, the gross proceeds shall be so  
14 attributed.

15           (C) No manufacturer or producer, engaged in such  
16 business in the State and selling the  
17 manufacturer's or producer's products for  
18 delivery outside of the State (for example,  
19 consigned to a mainland purchaser via common  
20 carrier f.o.b. Honolulu), shall be required to  
21 pay the tax imposed in this chapter for the



1 privilege of so selling the products, and the  
2 value or gross proceeds of sales of the products  
3 shall be included only in determining the measure  
4 of the tax imposed upon the manufacturer or  
5 producer.

6 (D) When a manufacturer or producer, engaged in such  
7 business in the State, also is engaged in selling  
8 the manufacturer's or producer's products in the  
9 State at wholesale, retail, or in any other  
10 manner, the tax for the privilege of engaging in  
11 the business of selling the products in the State  
12 shall apply to the manufacturer or producer as  
13 well as the tax for the privilege of  
14 manufacturing or producing in the State, and the  
15 manufacturer or producer shall make the returns  
16 of the gross proceeds of the wholesale, retail,  
17 or other sales required for the privilege of  
18 selling in the State, as well as making the  
19 returns of the value or gross proceeds of sales  
20 of the products required for the privilege of  
21 manufacturing or producing in the State. The



1 manufacturer or producer shall pay the tax  
2 imposed in this chapter for the privilege of  
3 selling its products in the State, and the value  
4 or gross proceeds of sales of the products, thus  
5 subjected to tax, may be deducted insofar as  
6 duplicated as to the same products by the measure  
7 of the tax upon the manufacturer or producer for  
8 the privilege of manufacturing or producing in  
9 the State; provided that no producer of  
10 agricultural products who sells the products to a  
11 purchaser who will process the products outside  
12 the State shall be required to pay the tax  
13 imposed in this chapter for the privilege of  
14 producing or selling those products.

15 (E) A taxpayer selling to a federal cost-plus  
16 contractor may make the election provided for by  
17 paragraph (3)(C), and in that case the tax shall  
18 be computed pursuant to the election,  
19 notwithstanding this paragraph or paragraph (1)  
20 to the contrary.



1 (F) The department, by rule, may require that a  
2 seller take from the purchaser of tangible  
3 personal property a certificate, in a form  
4 prescribed by the department, certifying that the  
5 sale is a sale at wholesale; provided that:

- 6 (i) Any purchaser who furnishes a certificate  
7 shall be obligated to pay to the seller,  
8 upon demand, the amount of the additional  
9 tax that is imposed upon the seller whenever  
10 the sale in fact is not at wholesale; and  
11 (ii) The absence of a certificate in itself shall  
12 give rise to the presumption that the sale  
13 is not at wholesale unless the sales of the  
14 business are exclusively at wholesale.

15 (3) Tax upon contractors.

16 (A) Upon every person engaging or continuing within  
17 the State in the business of contracting, the tax  
18 shall be equal to four per cent of the gross  
19 income of the business.

20 (B) In computing the tax levied under this paragraph,  
21 there shall be deducted from the gross income of



1 the taxpayer so much thereof as has been included  
2 in the measure of the tax levied under  
3 subparagraph (A), on:

4 (i) Another taxpayer who is a contractor, as  
5 defined in section 237-6;

6 (ii) A specialty contractor, duly licensed by the  
7 department of commerce and consumer affairs  
8 pursuant to section 444-9, in respect of the  
9 specialty contractor's business; or

10 (iii) A specialty contractor who is not licensed  
11 by the department of commerce and consumer  
12 affairs pursuant to section 444-9, but who  
13 performs contracting activities on federal  
14 military installations and nowhere else in  
15 this State;

16 provided that any person claiming a deduction  
17 under this paragraph shall be required to show in  
18 the person's return the name and general excise  
19 number of the person paying the tax on the amount  
20 deducted by the person.



1 (C) In computing the tax levied under this paragraph  
2 against any federal cost-plus contractor, there  
3 shall be excluded from the gross income of the  
4 contractor so much thereof as fulfills the  
5 following requirements:

6 (i) The gross income exempted shall constitute  
7 reimbursement of costs incurred for  
8 materials, plant, or equipment purchased  
9 from a taxpayer licensed under this chapter,  
10 not exceeding the gross proceeds of sale of  
11 the taxpayer on account of the transaction;  
12 and

13 (ii) The taxpayer making the sale shall have  
14 certified to the department that the  
15 taxpayer is taxable with respect to the  
16 gross proceeds of the sale, and that the  
17 taxpayer elects to have the tax on gross  
18 income computed the same as upon a sale to  
19 the state government.

20 (D) A person who, as a business or as a part of a  
21 business in which the person is engaged, erects,





1 constructs, or improves any building or  
2 structure, of any kind or description, or makes,  
3 constructs, or improves any road, street,  
4 sidewalk, sewer, or water system, or other  
5 improvements on land held by the person (whether  
6 held as a leasehold, fee simple, or otherwise),  
7 upon the sale or other disposition of the land or  
8 improvements, even if the work was not done  
9 pursuant to a contract, shall be liable to the  
10 same tax as if engaged in the business of  
11 contracting, unless the person shows that at the  
12 time the person was engaged in making the  
13 improvements the person intended, and for the  
14 period of at least one year after completion of  
15 the building, structure, or other improvements  
16 the person continued to intend to hold and not  
17 sell or otherwise dispose of the land or  
18 improvements. The tax in respect of the  
19 improvements shall be measured by the amount of  
20 the proceeds of the sale or other disposition  
21 that is attributable to the erection,



1 construction, or improvement of such building or  
2 structure, or the making, constructing, or  
3 improving of the road, street, sidewalk, sewer,  
4 or water system, or other improvements. The  
5 measure of tax in respect of the improvements  
6 shall not exceed the amount which would have been  
7 taxable had the work been performed by another,  
8 subject as in other cases to the deductions  
9 allowed by subparagraph (B). Upon the election  
10 of the taxpayer, this paragraph may be applied  
11 notwithstanding that the improvements were not  
12 made by the taxpayer, or were not made as a  
13 business or as a part of a business, or were made  
14 with the intention of holding the same. However,  
15 this paragraph shall not apply in respect of any  
16 proceeds that constitute or are in the nature of  
17 rent; all such gross income shall be taxable  
18 under paragraph (9); provided that insofar as the  
19 business of renting or leasing real property  
20 under a lease is taxed under section 237-16.5,  
21 the tax shall be levied by section 237-16.5.



1           (4) Tax upon theaters, amusements, radio broadcasting  
2           stations, etc.

3           (A) Upon every person engaging or continuing within  
4           the State in the business of operating a theater,  
5           opera house, moving picture show, vaudeville,  
6           amusement park, dance hall, skating rink, radio  
7           broadcasting station, or any other place at which  
8           amusements are offered to the public, the tax  
9           shall be equal to four per cent of the gross  
10          income of the business, and in the case of a sale  
11          of an amusement at wholesale under section 237-  
12          4(a)(13), the tax shall be ~~[subject to section~~  
13          ~~237-13.3.]~~ one-half per cent of the gross income.

14          (B) The department may require that the person  
15          rendering an amusement at wholesale take from the  
16          licensed seller a certificate, in a form  
17          prescribed by the department, certifying that the  
18          sale is a sale at wholesale; provided that:

19           (i) Any licensed seller who furnishes a  
20           certificate shall be obligated to pay to the  
21           person rendering the amusement, upon demand,



1 the amount of additional tax that is imposed  
2 upon the seller whenever the sale is not at  
3 wholesale; and

4 (ii) The absence of a certificate in itself shall  
5 give rise to the presumption that the sale  
6 is not at wholesale unless the person  
7 rendering the sale is exclusively rendering  
8 the amusement at wholesale.

9 (5) Tax upon sales representatives, etc. Upon every  
10 person classified as a representative or purchasing  
11 agent under section 237-1, engaging or continuing  
12 within the State in the business of performing  
13 services for another, other than as an employee, there  
14 is likewise hereby levied and shall be assessed and  
15 collected a tax equal to four per cent of the  
16 commissions and other compensation attributable to the  
17 services so rendered by the person.

18 (6) Tax on service business.

19 (A) Upon every person engaging or continuing within  
20 the State in any service business or calling  
21 including professional services not otherwise



1 specifically taxed under this chapter, there is  
2 likewise hereby levied and shall be assessed and  
3 collected a tax equal to four per cent of the  
4 gross income of the business, and in the case of  
5 a wholesaler under section 237-4(a)(10), the tax  
6 shall be equal to one-half [~~of one~~] per cent of  
7 the gross income of the business.

8 [~~Notwithstanding the foregoing, a wholesaler~~  
9 ~~under section 237-4(a)(10) shall be subject to~~  
10 ~~section 237-13.3.~~]

11 (B) The department may require that the person  
12 rendering a service at wholesale take from the  
13 licensed seller a certificate, in a form  
14 prescribed by the department, certifying that the  
15 sale is a sale at wholesale; provided that:

16 (i) Any licensed seller who furnishes a  
17 certificate shall be obligated to pay to the  
18 person rendering the service, upon demand,  
19 the amount of additional tax that is imposed  
20 upon the seller whenever the sale is not at  
21 wholesale; and



1           (ii) The absence of a certificate in itself shall  
2           give rise to the presumption that the sale  
3           is not at wholesale unless the person  
4           rendering the sale is exclusively rendering  
5           services at wholesale.

6           (C) Where any person is engaged in the business of  
7           selling interstate or foreign common carrier  
8           telecommunication services within and without the  
9           State, other than as a home service provider, the  
10          tax shall be imposed on that portion of gross  
11          income received by a person from service which is  
12          originated or terminated in this State and is  
13          charged to a telephone number, customer, or  
14          account in this State notwithstanding any other  
15          state law (except for the exemption under section  
16          237-23(a)(1)) to the contrary. If, under the  
17          Constitution and laws of the United States, the  
18          entire gross income as determined under this  
19          paragraph of a business selling interstate or  
20          foreign common carrier telecommunication services  
21          cannot be included in the measure of the tax, the



1 gross income shall be apportioned as provided in  
2 section 237-21; provided that the apportionment  
3 factor and formula shall be the same for all  
4 persons providing those services in the State.

5 (D) Where any person is engaged in the business of a  
6 home service provider, the tax shall be imposed  
7 on the gross income received or derived from  
8 providing interstate or foreign mobile  
9 telecommunications services to a customer with a  
10 place of primary use in this State when such  
11 services originate in one state and terminate in  
12 another state, territory, or foreign country;  
13 provided that all charges for mobile  
14 telecommunications services which are billed by  
15 or for the home service provider are deemed to be  
16 provided by the home service provider at the  
17 customer's place of primary use, regardless of  
18 where the mobile telecommunications originate,  
19 terminate, or pass through; provided further that  
20 the income from charges specifically derived from  
21 interstate or foreign mobile telecommunications



1 services, as determined by books and records that  
2 are kept in the regular course of business by the  
3 home service provider in accordance with section  
4 239-24, shall be apportioned under any  
5 apportionment factor or formula adopted under  
6 subparagraph (C). Gross income shall not  
7 include:

8 (i) Gross receipts from mobile  
9 telecommunications services provided to a  
10 customer with a place of primary use outside  
11 this State;

12 (ii) Gross receipts from mobile  
13 telecommunications services that are subject  
14 to the tax imposed by chapter 239;

15 (iii) Gross receipts from mobile  
16 telecommunications services taxed under  
17 section 237-13.8; and

18 (iv) Gross receipts of a home service provider  
19 acting as a serving carrier providing mobile  
20 telecommunications services to another home  
21 service provider's customer.





1           For the purposes of this paragraph, "charges for  
2           mobile telecommunications services", "customer",  
3           "home service provider", "mobile  
4           telecommunications services", "place of primary  
5           use", and "serving carrier" have the same meaning  
6           as in section 239-22.

7       (7) Tax on insurance producers. Upon every person engaged  
8       as a licensed producer pursuant to chapter 431, there  
9       is hereby levied and shall be assessed and collected a  
10      tax equal to 0.15 per cent of the commissions due to  
11      that activity.

12      (8) Tax on receipts of sugar benefit payments. Upon the  
13      amounts received from the United States government by  
14      any producer of sugar (or the producer's legal  
15      representative or heirs), as defined under and by  
16      virtue of the Sugar Act of 1948, as amended, or other  
17      Acts of the Congress of the United States relating  
18      thereto, there is hereby levied a tax of one-half [~~of~~  
19      ~~one~~] per cent of the gross amount received; provided  
20      that the tax levied hereunder on any amount so  
21      received and actually disbursed to another by a



1 producer in the form of a benefit payment shall be  
2 paid by the person or persons to whom the amount is  
3 actually disbursed, and the producer actually making a  
4 benefit payment to another shall be entitled to claim  
5 on the producer's return a deduction from the gross  
6 amount taxable hereunder in the sum of the amount so  
7 disbursed. The amounts taxed under this paragraph  
8 shall not be taxable under any other paragraph,  
9 subsection, or section of this chapter.

10 (9) Tax on other business. Upon every person engaging or  
11 continuing within the State in any business, trade,  
12 activity, occupation, or calling not included in the  
13 preceding paragraphs or any other provisions of this  
14 chapter, there is likewise hereby levied and shall be  
15 assessed and collected, a tax equal to four per cent  
16 of the gross income thereof. In addition, the rate  
17 prescribed by this paragraph shall apply to a business  
18 taxable under one or more of the preceding paragraphs  
19 or other provisions of this chapter, as to any gross  
20 income thereof not taxed thereunder as gross income or



1 gross proceeds of sales or by taxing an equivalent  
2 value of products, unless specifically exempted."

3 SECTION 4. Section 237-16.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (g) to read as follows:

5 "(g) After allocation under subsection (c), if necessary,  
6 the deduction under this section shall be allowed from the gross  
7 proceeds or gross income of the lessee received from its  
8 sublease in an amount calculated by multiplying the gross  
9 proceeds or gross income paid by the lessee to its lessor for  
10 the lease of the real property by ~~[the following amount:~~

11 ~~(1) In calendar year 1998, .125;~~

12 ~~(2) In calendar year 1999, .25;~~

13 ~~(3) In calendar year 2000, .375;~~

14 ~~(4) In calendar year 2001, .50;~~

15 ~~(5) In calendar year 2002, .625;~~

16 ~~(6) In calendar year 2003, .75; and~~

17 ~~(7) In calendar year 2004, and thereafter,] .875.~~

18 The amount calculated ~~[under paragraphs (1) to (7)]~~ shall  
19 be deducted by the lessee from the lessee's total reported gross  
20 proceeds or gross income. The deduction allowed by this



1 subsection may be taken by the fiscal and calendar year  
2 lessees."

3 SECTION 5. Section 239-5, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) Notwithstanding subsection (a), the rate of tax upon  
6 the portion of the gross income of:

7 (1) A public utility that consists of the receipts from  
8 the sale of its products or services to another public  
9 utility that resells such products or services shall  
10 be one-half of one per cent; or

11 (2) A public utility engaged in the business of selling  
12 telecommunication services to a person defined in  
13 section 237-13(6)(C) who resells such products or  
14 services, shall be ~~[as follows:~~

15 ~~(A) In calendar year 2000, 5.5 per cent;~~

16 ~~(B) In calendar year 2001, 5.0 per cent;~~

17 ~~(C) In calendar year 2002, 4.5 per cent;~~

18 ~~(D) In calendar year 2003, 4.0 per cent;~~

19 ~~(E) In calendar year 2004, 3.5 per cent;~~

20 ~~(F) In calendar year 2005, 3.0 per cent;~~

21 ~~(G) In calendar year 2006, 2.5 per cent; and~~



1           ~~(H) In calendar year 2007, and thereafter, 0.5 per~~  
2           ~~cent,~~ one-half per cent;  
3 provided that the resale of the products, services, or  
4 telecommunication services is subject to taxation under this  
5 section or subject to taxation at the highest rate under section  
6 237-13(6); and provided further that the public utility's  
7 exemption from real property taxes imposed by chapter 246 shall  
8 be reduced by the proportion that its public utility gross  
9 income described herein bears to its total public utility gross  
10 income. Whenever the public utility has other public utility  
11 gross income, the gross income from the sale of its products or  
12 services to another public utility or a person subject to  
13 section 237-13(6)(C) shall be included in applying subsection  
14 (a) in determining the rate of tax upon the other public utility  
15 gross income. The department shall have the authority to  
16 implement the tax rate changes in paragraph (2) by prescribing  
17 tax forms and instructions that require tax reporting and  
18 payment by deduction, allocation, or any other method to  
19 determine tax liability with due regard to the tax rate  
20 changes."



1       SECTION 6. Section 239-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "**§239-6 Airlines, certain carriers.** (a) There shall be  
4 levied and assessed upon each airline a tax of four per cent of  
5 its gross income each year from the airline business; provided  
6 that if an airline adopts a rate schedule for students in grade  
7 twelve or below traveling in school groups providing such  
8 students at reasonable hours a rate less than one-half of the  
9 regular adult fare, the tax shall be three per cent of its gross  
10 income each year from the airline business.

11       (b) There shall be levied and assessed upon each motor  
12 carrier, each common carrier by water, and upon each contract  
13 carrier other than a motor carrier, a tax of four per cent of  
14 its gross income each year from the motor carrier or contract  
15 carrier business.

16       (c) The tax imposed by this section is a means of taxing  
17 the personal property of the airline or other carrier, tangible  
18 and intangible, including going concern value, and is in lieu of  
19 the tax imposed by chapter 237 but is not in lieu of any other  
20 tax.

21       (d) Notwithstanding subsections (a), (b), and (c), the



1 rate of tax upon the portion of the gross income of a motor  
2 carrier which consists of the receipts from the sale of its  
3 products or services to a contractor shall be ~~[as follows:~~

4 ~~(1) In calendar year 2000, 3.5 per cent,~~

5 ~~(2) In calendar year 2001, 3.0 per cent,~~

6 ~~(3) In calendar year 2002, 2.5 per cent,~~

7 ~~(4) In calendar year 2003, 2.0 per cent,~~

8 ~~(5) In calendar year 2004, 1.5 per cent,~~

9 ~~(6) In calendar year 2005, 1.0 per cent, and~~

10 ~~(7) In calendar year 2006, and thereafter, 0.5 per cent,]~~

11 one-half per cent;

12 provided that there is a resale of the products or services and  
13 the resale by the contractor is subject to taxation at the  
14 highest rate under section 237-13; the gross income of the motor  
15 carrier is not divided as provided in the definition of "gross  
16 income" in section 239-2 for the tax imposed under this chapter  
17 or chapter 237; and the gross income of the motor carrier from  
18 the sale of its products or services to the contractor is not  
19 subject to a deduction under chapter 237 by the contractor; and  
20 in the case of services provided by the motor carrier, the  
21 benefit of the service passes to the customer of the contractor



1 as an identifiable element of the contracting or service  
2 provided by the contractor and does not constitute overhead as  
3 defined in section 237-1.

4 ~~[The department shall have the authority to implement the~~  
5 ~~tax rate changes in paragraphs (1) through (7) by prescribing~~  
6 ~~tax forms and instructions that require tax reporting and~~  
7 ~~payment by deduction, allocation, or any other method to~~  
8 ~~determine tax liability with due regard to the tax rate~~  
9 ~~changes.]~~

10 For purposes of this subsection, "contractor" has the same  
11 meaning as defined in section 237-6.

12 ~~[(e) Notwithstanding subsections (a) through (d),~~  
13 ~~beginning on October 1, 2001, the tax under this chapter shall~~  
14 ~~not apply to airlines, motor carriers, common carriers by water,~~  
15 ~~and contract carriers other than motor carriers; provided that~~  
16 ~~the gross income received on or after October 1, 2001, by these~~  
17 ~~carriers shall be subject to the tax imposed under chapter 237.~~  
18 ~~For the taxable year in which October 1, 2001 occurs, the tax~~  
19 ~~imposed and due under this chapter for the affected carriers~~  
20 ~~shall be abated in an amount equal to:~~





- ~~(1) The tax imposed on the first day of the taxpayer's taxable year in which October 1, 2001 occurs;~~
- ~~(2) Divided by the number of months in the taxpayer's affected taxable year; and~~
- ~~(3) Multiplied by the number of months in the taxpayer's taxable year remaining after September 30, 2001.] "~~

SECTION 7. Section 237-13.3, Hawaii Revised Statutes, is repealed.

~~["§237-13.3 Application of sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the contrary notwithstanding, instead of the tax levied under section 237-13(2)(A) on wholesale sales subject to section 237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler subject to section 237-4(a)(13), and under section 237-13(6)(A) on a wholesaler subject to section 237-4(a)(10) at one-half of one per cent, during the period January 1, 2000, to December 31, 2005, the tax shall be as follows:~~

- ~~(1) In calendar year 2000, 3.5 per cent;~~
- ~~(2) In calendar year 2001, 3.0 per cent;~~



1       ~~(3) In calendar year 2002, 2.5 per cent,~~

2       ~~(4) In calendar year 2003, 2.0 per cent,~~

3       ~~(5) In calendar year 2004, 1.5 per cent,~~

4       ~~(6) In calendar year 2005, 1.0 per cent, and~~

5       ~~(7) In calendar year 2006 and thereafter, the tax shall be~~

6             ~~0.5 per cent.~~

7       ~~(b) The department shall have the authority to implement~~  
8 ~~the tax rate changes in subsection (a) by prescribing tax forms~~  
9 ~~and instructions that require tax reporting and payment by~~  
10 ~~deduction, allocation, or any other method to determine tax~~  
11 ~~liability with due regard to the tax rate changes."]~~

12       SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14       SECTION 9. This Act shall take effect on July 1, 2015.

15  
INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 1212

**Report Title:**

General Excise Tax; Public Service Company Tax; Revision

**Description:**

Amends various sections of the general excise tax and public service company tax laws for the purpose of deleting obsolete and unnecessary provisions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

